

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 9**

In the matter of:)		
)		
Kingspan Insulated Panels, Inc. d/b/a)	NLRB Case Nos.	9-CA-072906 &
Kingspan Benchmark)		9-RC-069754
)		
Respondent,)		
)		
and)		
)		
Sheet Metal Workers International)		
Association, Local Union No. 24,)		
)		
Charging Party.)		

**RESPONDENT KINGSPAN INSULATED PANELS, INC. D/B/A KINGSPAN
BENCHMARK'S EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE'S
DECISION**

Pursuant to Rule 102.46 of the National Labor Relations Board's (Board's) Rules and Regulations, the Respondent-Employer, Kingspan Insulated Panels, Inc. d/b/a Kingspan Benchmark (Kingspan), by and through its undersigned counsel, timely files the following exceptions to the Decision of Administrative Law Judge (ALJ) Arthur J. Amchan issued on June 8, 2012.

I. Kingspan Excepts the Following Factual Findings of the ALJ

1. Kingspan excepts the ALJ's factual finding that the unfair labor practice charge in this matter was filed January 30, 2012. The ALJ's finding is not supported by the weight of the record evidence. (Dec. 1/29; GC Ex. 1a).¹

¹ Citations are as follows: ALJ Decision (Dec. page/line); Transcript (Tr.); General Counsel's Exhibits (GC Ex.); Respondent's Exhibits (R. Ex.).

2. Kingspan excepts the ALJ's factual finding that the election at issue occurred on January 20, 2012. This finding is not supported by the weight of the record evidence. (Dec. 1/34, 37; GC Ex. 1e; R. Exs. 1a & 18).

3. Kingspan excepts the ALJ's failure to state the revised tally of the ballots. The absence of such a finding is prejudicial and biased. (Dec. 1).

4. Kingspan excepts the ALJ's factual finding that, "The unit generally includes all full-time and regular part-time production and maintenance employees at Respondent's Columbus, Ohio facility." There is a specific voting unit pursuant to the parties' stipulated election agreement that properly describes the voting unit; the ALJ's description is inconsistent with the record evidence. (Dec. 1/n. 1; GC Ex. 1e; R. Exs. 1a & 18).

5. Kingspan excepts the ALJ's factual finding that Roger Wood, a maintenance electrician employee for Kingspan is a "bargaining unit member." The ALJ's finding is not supported by the weight of the record evidence and reflects the ALJ's bias in that there is no bargaining unit at Respondent's Columbus, Ohio location. (Dec. 1/41-43, 2/25).

6. Kingspan excepts the ALJ's crediting of Wood and his finding that the conversation between he and Jeff Irwin, Chief Executive Officer Kingspan Benchmark, occurred as described by Wood. The ALJ's credibility and factual finding is not supported by the weight of the record evidence. (Dec. 2/32; Tr. 15-17, 335-38, 340-43).

7. Kingspan excepts the ALJ's credibility and factual finding that Patrick Harris, Acting Production Manager for Respondent, had further communication about the Sheet Metal Workers International Association, Local 24 (Union) with Andrea Lackemacher, Director of Human Resources and Gabor Tovari-Nagy, Operations Manager, between October 8, 2011 and November. The ALJ's credibility and factual finding is not supported by the weight of the

record evidence. (Dec. 2/45-47; Tr. 14, 17, 21, 82-84, 97-98, 138-39, 142-44, 213-16, 239-43, 285-86, 299-301, 307-08, 336-37, 343-44, 347-48; GC Exs. 11-17; R. Ex. 8).

8. Kingspan excepts the ALJ's factual finding that "Respondent was obviously very interested in whether or not there would be another organizing drive at least as early as October 8, 2011." The ALJ's factual finding is biased and prejudicial, and is not supported by the weight of the record evidence. (Dec. 2/47-3/1; Tr. 283-84, 337).

9. Kingspan excepts that ALJ's factual finding that, "I infer this information was shared with all the top managers, including Irwin." The ALJ's statement is biased and prejudicial; vague and ambiguous; and not supported by the weight of the record evidence. (Dec. 3/1-2; Tr. 14, 17, 21, 82-84, 97-98, 138-39, 142-44, 213-16, 239-43, 283-86, 299-301, 307-08, 336-37, 343-44, 347-48; GC Exs. 11-17; R. Ex. 8).

10. Kingspan excepts the ALJ's discrediting of Harris' testimony that he first became aware of renewed union activity at the plant on November 18, 2011. The ALJ's credibility determination is biased and prejudicial, and is not supported by the weight of the record evidence. (Dec. 3/2-4; Tr. 14, 17, 21, 82-84, 97-98, 138-39, 142-44, 213-16, 239-43, 285-86, 299-301, 307-08, 336-37, 343-44, 347-48; GC Exs. 11-17; R. Ex. 8).

11. Kingspan excepts the ALJ's credibility and factual finding crediting Wood's testimony concerning the alleged November 1, 2011 conversation with Irwin and concluding that it is unlikely that Wood would "conjure up his story out of whole cloth." The ALJ's determination is biased and prejudicial, and is not supported by the weight of the record evidence. (Dec. 3/4-6; Tr. 15-17, 34-35, 60, 62, 72-73, 79-80, 335-338).

12. Kingspan excepts the ALJ's credibility determination crediting Terry Whitehall, maintenance employee for Respondent, for the "same reasons that I credit Wood...." The ALJ's

determination is biased and prejudicial, and is not supported by the weight of the record evidence. (Dec. 3/14; Tr. 15-17, 34-35, 60, 62, 72-73, 79-80, 84-86, 305, 335-338).

13. Kingspan excepts the ALJ's factual finding that Irwin did not categorically deny asking Whitehall who was in charge of getting the Union in. The ALJ's finding is not supported by the weight of the record evidence. (Dec. 3/10-15; Tr. 336-338).

14. Kingspan excepts the ALJ's finding that Wood testified that on or about November 18, 2011, he went to lunch with Harris, Mike Holdren, Afternoon Shift Manager, and Cory Dimmerling, a Lead. The ALJ's finding is not supported by the weight of the record evidence. (Dec. 3/17-19; Tr. 18, 79-80, 274-75, 286-87).

15. Kingspan excepts the ALJ's finding that "Respondent raised Wood's wage rate to \$12.09 per hour." The ALJ's factual finding is biased and prejudicial, and mischaracterizes the record evidence. (Dec. 4/1-2; Tr. 12, 26-27, 55-56, 199, 263-64).

16. Kingspan excepts the ALJ's crediting of Harris about a lunch date prior to November 24. The ALJ's finding is internally inconsistent with his prior discrediting of Harris and demonstrates bias and prejudice. (Dec. 3/2-4, 24; Tr. 14, 17, 21, 82-84, 97-98, 138-39, 142-44, 213-16, 239-43, 274-75, 285-87, 299-301, 307-08, 336-37, 343-44, 347-48; GC Exs. 11-17; R. Ex. 8)

17. Kingspan excepts the ALJ's factual finding in prior to June 2011, Harris reported to Wood that then-Operations Manager Steve Gross told Harris that Respondent could not afford to give Wood another raise. The ALJ's finding is biased and prejudicial, and is not supported by the weight of the record evidence. (Dec. 4/2-5; Tr. 12-13, 54, 79, 273, 279-80).

18. Kingspan excepts the ALJ's factual finding that Gabor Tovari-Nagy, Operations Manager, told David Simons, Maintenance Manager, that he had no intention of giving Wood a

raise at that time. The ALJ's factual finding is not supported by the weight of the record evidence. (Dec. 4/17-18; Tr. 13-14, 22, 26, 44-45, 53-55, 144, 173-74, 230, 192-98; R. Ex. 5).

19. Kingspan excepts the ALJ's factual finding that because Kingspan did not tell Wood the exact amount of his raise on November 29, 2011, and because Simon's gave him the incorrect figure on November 30, 2011 (allegedly by \$0.09), the ALJ inferred that Kingspan's decision to raise Wood's wage rate was made hurriedly and in response to the demand for recognition. The ALJ's factual finding demonstrates bias and prejudice, and is not supported by the weight of the record evidence. (Dec. 4/27-31; Tr. 13-14, 22, 26, 44-45, 53-55, 144, 173-74, 230, 192-98; R. Ex. 5).

20. Kingspan excepts the ALJ's factual finding that eleven employees were apparently paid the shift differential on December 9, 2011. The ALJ's factual finding is biased and prejudicial, and is not supported by the weight of the evidence. (Dec. 5/n. 7; Tr. 70, 106, 122, 169-70, 230, 253-58; GC Exs. 3-4; R. Exs. 10-13).

21. Kingspan excepts the ALJ's factual finding that six to eight employees currently work the second shift. The ALJ's factual finding is not relevant in that the composition of the shift currently is immaterial to the composition at the time of the election. (Dec. 5/3-4; Tr. 70, 106, 122, 169-70, 230, 253-58; R. Exs. 10-11).

22. Kingspan excepts the ALJ's credibility and factual finding that the \$1.00/hour shift premium first appeared in employees' paychecks on December 9, 2011. The ALJ's portrayal of this factual finding is biased and prejudicial. (Dec. 5/8-9; Tr. 108-09, 130-31, 180-81, 253-62, 289-90; GC Exs. 3-4; R. Exs. 10-13).

23. Kingspan excepts the ALJ's factual finding that for several months prior to November 22, 2011, second shift Kingspan employees had been inquiring of management about a second shift

pay differential. The ALJ's factual finding is not supported by the weight of the record evidence. (Dec. 5/10-12; Tr. 25, 107-09, 115-16, 128-29, 287-90).

24. Kingspan excepts the ALJ's credibility and factual finding that because there is no documentary evidence to support Tovari-Nagy's testimony about the implementation process for the second shift premium, the ALJ discredited the testimony. The ALJ's credibility and factual findings are biased and prejudicial, and are not supported by the weight of the record evidence. (Dec. 5/17-18; Tr. 11, 55, 62-64, 108, 115, 127, 166-67, 173, 181-89, 192, 198-99, 207-10, 221-23, 225-26, 229-38, 250-54, 261-62, 264-65, 267, 271, 281-82, 289-90; R. Exs. 2 & 9).

25. Kingspan excepts the ALJ's factual finding that based on Kingspan employee Chaz Vallette's testimony, he asked Harris at least twice in September 2011 about receiving a shift premium and Kingspan did nothing towards implementing a shift premium until late November. The ALJ's factual finding is not supported by the weight of the record evidence. (Dec. 5/24-26; Tr. 107-08, 115, 166-67, 173, 181-89, 192, 198-99, 207-10, 221-23, 225-26, 229-38, 250-54, 261-62, 264-65, 267, 271, 281-82, 289-90; R. Exs. 2 & 9).

26. Kingspan excepts the ALJ's factual finding that employee William Groce asked Harris and Second Shift Supervisor James Latham about the shift differential repeatedly. The ALJ's factual finding is internally inconsistent with regard to later finding that Latham was not in the voting unit, and is not supported with the weight of the record evidence. (Dec. 5/26-27; Tr. 127-29, 166-67, 173, 181-89, 192, 198-99, 207-10, 221-23, 225-26, 229-38, 250-54, 261-62, 264-65, 267, 271, 281-82, 289-90; R. Exs. 2 & 9).

27. Kingspan excepts the ALJ's factual finding that because Kingspan did not indicate to employees that it was in the process of getting approval from the corporate headquarters for a second shift premium that it was not occurring. The ALJ's factual finding is biased, prejudicial

and irrelevant. (Dec. 5/27-29; Tr. 166-67, 173, 181-89, 192, 198-99, 207-10, 221-23, 225-26, 229-38, 250-54, 261-62, 264-65, 267, 271, 281-82, 289-90; R. Exs. 2 & 9).

28. Kingspan excepts the ALJ's factual finding that it "appears" to be Respondent's position that the implementation of the second shift differential and the wage increase for Roger Wood effective December 1, 2011 had nothing to do with the Union's organizing drive. The ALJ's factual finding is biased and prejudicial and misstates Kingspan's position which "is" that neither action had anything to do with the Union's organizing drive. (Dec. 5/38-40; Tr. 11, 13-14, 22, 26, 44-45, 53-55, 62-64, 108, 115, 127, 144, 166-67, 173-74, 181-89, 192--99, 207-10, 221-23, 225-26, 229-38, 250-54, 261-62, 264-65, 267, 271, 281-82, 289-90; R. Exs. 2, 5 & 9).

29. Kingspan excepts the ALJ's factual finding that Respondent suggests that it is a "mere coincidence" that Wood received his increase the day that the Union gave its demand letter to Respondent. The ALJ's factual finding is biased and prejudicial, and is not supported by the weight of the record evidence. (Dec. 5/40- 6/1; Tr. 11, 13-14, 22-24, 26, 44-45, 53-55, 59, 76-77, 107-08, 110, 144, 173-74, 230, 184-85, 192-99, 207-10, 230, 233-34, 247, 264-73, 281-82, 298-300; GC Exs. 9-10, 22 & 23; R. Exs. 5, 14 & 15).

30. Kingspan excepts the ALJ's factual finding that the timing of Wood's December 1, 2011 pay increase and the implementation of the second shift premium made in late November 2011 were motivated by a desire to discourage employees from organizing. The ALJ's factual finding is not supported by the weight of the record evidence. (Dec. 6/5-7; Tr. 11, 13-14, 22-24, 26, 44-45, 53-55, 59, 62-64, 76-77, 107-08, 110, 115, 127, 144, 166-67, 173-74, 181-89, 192--99, 207-10, 221-23, 225-26, 229-38, 247, 250-54, 261-62, 264-73, 281-82, 289-90, 298-300; GC Exs. 9-10, 22 & 23; R. Exs. 2, 5 & 9).

31. Kingspan excepts the ALJ's factual finding that Kingspan has presented no credible explanation for why Wood's pay increase or the implementation of the shift differential could not have been instituted in the July-September 2011 timeframe. The ALJ's factual finding is not supported by the weight of the record evidence. (Dec. 6/8-10; Tr. 11, 13-14, 22-24, 26, 44-45, 53-55, 59, 62-64, 76-77, 107-08, 110, 115, 127, 144, 166-67, 173-74, 181-89, 192--99, 207-10, 221-23, 225-26, 229-38, 247, 250-54, 261-62, 264-73, 281-82, 289-90, 298-300; GC Exs. 9-10, 22 & 23; R. Exs. 2, 5 & 9).

32. Kingspan excepts the ALJ's factual finding that there is no evidence as to the procedure followed in raising individual employees' wages. The ALJ's factual finding is not supported by the weight of the record evidence. (Dec. 6/12-15; Tr. 11, 13-14, 22-24, 26, 44-45, 53-55, 59, 76-77, 107-08, 110, 144, 173-74, 230, 184-85, 192-99, 207-10, 230, 233-34, 247, 264-73, 281-82, 298-300; GC Exs. 9-10, 22 & 23; R. Exs. 5, 14 & 15).

33. Kingspan excepts the ALJ's factual finding that Tovari-Nagy did not know the procedure followed in raising employees' wages. The ALJ's factual finding is not supported by the weight of the record evidence. (Dec. 6/15-16; Tr. 11, 13-14, 22-24, 26, 44-45, 53-55, 59, 76-77, 107-08, 110, 144, 173-74, 230, 184-85, 192-99, 207-10, 230, 233-34, 247, 264-73, 281-82, 298-300; GC Exs. 9-10, 22 & 23; R. Exs. 5, 14 & 15).

34. Kingspan excepts the ALJ's factual finding that Harris did not know what happened to the request for employee wage increases after he submitted them to Andrea Lackemacher, Director of Human Resources. The ALJ's factual finding is not supported by the weight of the record evidence. (Dec. 6/17-19; Tr. 11, 13-14, 22-24, 26, 44-45, 53-55, 59, 76-77, 107-08, 110, 144, 173-74, 230, 184-85, 192-99, 207-10, 230, 233-34, 247, 264-73, 281-82, 298-300; GC Exs. 9-10, 22 & 23; R. Exs. 5, 14 & 15).

35. Kingspan excepts the ALJ's factual finding that there is no documentation of any consideration or plan to institute a shift differential prior to November 22, 2011. The ALJ's factual finding is not supported by the weight of the record evidence. (Dec. 6/18-20; Tr. 166-67, 173, 181-89, 192, 198-99, 207-10, 221-23, 225-26, 229-38, 250-54, 261-62, 264-65, 267, 271, 281-82, 289-90; R. Exs. 2 & 9).

36. Kingspan excepts the ALJ's factual finding that "there is no evidence regarding Tovari-Nagy's November 17 meeting with Brash, other than Tovari-Nagy's testimony." The ALJ's factual finding is biased and prejudicial, imposes an undue burden on Respondent, and is not supported by the weight of the record evidence. (Dec. 6/22-23; Tr. 183-85, 192, 225-26).

37. Kingspan excepts the ALJ's factual finding that it is clear that Kingspan wanted to nip the Union's organizing drive in the bud. The ALJ's factual finding is biased and prejudicial, and is not supported by the weight of the record evidence. (Dec. 6/29; Tr. 11, 13-17, 21-24, 26, 34-35, 44-45, 53-55, 59-60, 62-64, 72-73, 76-86, 97-98, 107-08, 110, 115, 127, 138-39, 142-44, 166-67, 173-74, 181-89, 192--99, 207-10, 213-16, 221-23, 225-26, 229-43, 247, 250-54, 261-62, 264-73, 281-86, 289-90, 298-301, 305, 307-08, 335-38, 340-44, 347-48; GC Exs. 9-17, 22-24; R. Exs. 2, 5, 8 & 9).

38. Kingspan excepts the ALJ's factual finding that he inferred that the announcement of the shift differential and the December 1, 2011 wage increase for Wood were part of the "charm offensive" that Tovari-Nagy was advised to undertake by Joe Brash, President of Kingspan, on November 19, 2011, to thwart the organizing drive. The ALJ's factual finding is biased and prejudicial, and is not supported by the weight of the record evidence. (Dec. 6/30-33; Tr. 11, 13-14, 17, 21-24, 26, 44-45, 53-55, 59, 62-64, 76-77, 82-84, 97-98, 107-08, 110, 115, 127, 138-39, 142-44, 166-67, 173-74, 181-89, 192--99, 207-10, 213-16, 221-23, 225-26, 229-43, 247, 250-54,

261-62, 264-73, 281-86, 289-90, 298-301, 307-08, 347-48; GC Exs. 9-17, 22-24; R. Exs. 2, 5, 8 & 9).

39. Kingspan excepts the ALJ's factual notation that Kingspan's November 19, 2011 emails relating to Union activity do not mention either the decision to implement a shift differential or a decision to raise Wood's wage rate substantially. The ALJ's commentary is biased, prejudicial and counterintuitive, and is not supported by the weight of the record evidence. (Dec. 6/n. 10; GC Exs. 11-17 & 24; R. Ex. 8).

40. Kingspan excepts the ALJ's omission of significant, material facts developed in the record. The ALJ's omission is biased and prejudicial, and results in a Decision not supported by the weight of the record evidence. (Tr. Tr. 6, 11-12, 14, 17, 53-56, 70-74, 76-77, 79-80, 83-84, 97-98, 106, 108-09, 115, 120-31, 134-39, 142, 144, 150-53, 160-62, 166-70, 173, 180-81, 184-85, 187-94, 197-99, 207-10, 213-15, 225-26, 230-34, 237-42, 247, 253-58, 261-73, 277-79, 281-82, 286, 289-90, 298-99, 302, 340-43; GC Exs. 3-4, 9-18, 22-24; R. Exs. 3, 6, 8 10-15).

II. Kingspan Excepts the Following Analyses and Conclusions of Law Set Forth by the ALJ

41. Kingspan excepts the ALJ's analysis and conclusion that Wood is a reliable witness because he is a current employee of Respondent. The ALJ's conclusion is not supported by the weight of the record evidence. (Dec. 3/n. 2; Tr. 15-17, 34-35, 60, 62, 72-73, 79-80, 335-338).

42. Kingspan excepts the ALJ's analysis and conclusion that Woods' testimony as to what Tovari-Nagy allegedly said to Simons regarding Woods' request for a pay increase is not hearsay. The ALJ's statement is conclusory and incorrect. (Dec. 4/n. 4; Tr. 13-14, 22, 26, 44-45, 53-55, 144, 173-74, 230, 192-98; R. Ex. 5).

43. Kingspan excepts the ALJ's analysis and conclusion that "Respondent violated Section 8(a)(1) as alleged in complaint paragraphs 5(a)(i) and (ii) and that Irwin's inquiry to Whitehall

constitutes objectionable conduct since it occurred during the ‘critical period.’” The ALJ’s analysis and conclusion is contrary to existing law, is not supported by the weight of the record evidence, and fails to expressly dismiss the objection as it relates to Wood. (Dec. 7/15-17; Tr. 15-17, 34-35, 60, 62, 72-73, 79-80, 84-86, 305, 335-338).

44. Kingspan excepts the ALJ’s analysis and conclusion that Irwin illegally questioned Whitehall and Wood. The ALJ’s analysis and conclusion is contrary to existing law, and is not supported by the weight of the record evidence. (Dec. 7/18; Tr. 15-17, 34-35, 60, 62, 72-73, 79-80, 84-86, 305, 335-338).

45. Kingspan excepts the ALJ’s analysis and conclusion that through Whitehall, Irwin sought the identity of in-house leaders of the organizing drive, and that the inquiry was violative because Irwin sought the identity of union supporters. The ALJ’s analysis and conclusion is contrary to existing law, and is not supported by the weight of the record evidence. (Dec. 7/20-24; Tr. 15-17, 34-35, 60, 62, 72-73, 79-80, 84-86, 305, 335-338).

46. Kingspan excepts the ALJ’s analysis and conclusion that Irwin “obviously did not know who [the in-house organizers] were, because otherwise he would not have asked Whitehall for this information.” The ALJ’s analysis and conclusion is biased and prejudicial, it is internally inconsistent with his Decision, it is counterintuitive, and it is not supported by the weight of the record evidence. (Dec. 7/23-24; Tr. 15-17, 34-35, 60, 62, 72-73, 79-80, 84-86, 305, 335-338).

47. Kingspan excepts the ALJ’s analysis and conclusion that the place of the alleged November 1, 2011 interrogation of Wood by Irwin would tend to make the inquiry more coercive. The ALJ’s analysis and conclusion is contrary to existing law, and is not supported by the weight of the record evidence. (Dec. 7/25-26; Tr. 15-17, 34-35, 60, 62, 72-73, 79-80, 335-338).

48. Kingspan excepts the ALJ's conclusion that the alleged conversation between Harris and Wood occurred on or about November 18, 2011. The ALJ's conclusion is not supported by the weight of the record evidence. (Dec. 7/29; Tr. 14, 17-18, 21, 79-84, 97-98, 138-39, 142-44, 213-16, 239-43, 274-75, 285-87, 299-301, 307-08, 336-37, 343-44, 347-48; GC Exs. 11-17; R. Ex. 8).

49. Kingspan excepts the ALJ's analysis and conclusion that "there is plenty of evidence from which I infer anti-union animus including the timing of the wage increase for Wood, the timing of the implementation of the shift differential and CEO Irwin's expressed opinion that unionization was 'exactly what we don't need.'" The ALJ's analysis and conclusion is internally inconsistent in that having said anti-union animus is not necessary in the context of a Section 8(a)(1) violation, and having declared that he was not making any findings regarding alleged Section 8(a)(3) violations, biased and prejudicial, contrary to existing law, and is not supported by the weight of the record evidence. (Dec. 8/ n.13; Dec. 10/n. 15; Tr. 11, 13-17, 21-24, 26, 34-35, 44-45, 53-55, 59-60, 62-64, 72-73, 76-86, 97-98, 107-08, 110, 115, 127, 138-39, 142-44, 166-67, 173-74, 181-89, 192--99, 207-10, 213-16, 221-23, 225-26, 229-43, 247, 250-54, 261-62, 264-73, 281-86, 289-90, 298-301, 305, 307-08, 335-38, 340-44, 347-48; GC Exs. 9-17, 22-24; R. Exs. 2, 5, 8 & 9).

50. Kingspan excepts the ALJ's analysis and conclusion that "actions which do not violate the law may be relied upon in establishing animus." The ALJ's analysis and conclusion is internally inconsistent in that having said anti-union animus is not necessary in the context of a Section 8(a)(1) violation, and having declared that he was not making any findings regarding alleged Section 8(a)(3) violations, biased and prejudicial, contrary to existing law, and is not supported by the weight of the record evidence. (Dec. 8/ n.13; Dec. 10/n. 15; Tr. 11, 13-17, 21-

24, 26, 34-35, 44-45, 53-55, 59-60, 62-64, 72-73, 76-86, 97-98, 107-08, 110, 115, 127, 138-39, 142-44, 166-67, 173-74, 181-89, 192--99, 207-10, 213-16, 221-23, 225-26, 229-43, 247, 250-54, 261-62, 264-73, 281-86, 289-90, 298-301, 305, 307-08, 335-38, 340-44, 347-48; GC Exs. 9-17, 22-24; R. Exs. 2, 5, 8 & 9).

51. Kingspan excepts the ALJ's analysis and conclusion that Wood's wage increase constitutes objectionable conduct in that Respondent was aware that the Union filed its demand letter when it raised Wood's wages. The ALJ's analysis and conclusion is contrary to existing law, and is not supported by the weight of the record evidence. (Dec. 8/13-15; Tr. 11, 13-14, 22-24, 26, 44-45, 53-55, 59, 76-77, 107-08, 110, 144, 173-74, 230, 184-85, 192-99, 207-10, 230, 233-34, 247, 264-73, 281-82, 298-300; GC Exs. 9-10, 22 & 23; R. Exs. 5, 14 & 15).

52. Kingspan excepts the ALJ's analysis and conclusion applying NLRB v. Exchange Parts, 375 U.S. 405 (1964) to Wood's increase and finding that the increase was provided to Wood as a reward for eschewing union representation. The ALJ's analysis and conclusion is contrary to existing law, and is not supported by the weight of the record evidence. (Dec. 8/15-19; Tr. 11, 13-14, 22-24, 26, 44-45, 53-55, 59, 76-77, 107-08, 110, 144, 173-74, 230, 184-85, 192-99, 207-10, 230, 233-34, 247, 264-73, 281-82, 298-300; GC Exs. 9-10, 22 & 23; R. Exs. 5, 14 & 15).

53. Kingspan excepts the ALJ's analysis and conclusion that it was Respondent's burden to prove that Irwin was not aware of the Union's demand letter. The ALJ's analysis and conclusion is contrary to existing law, is not relevant, and is not supported by the weight of the record evidence. (Dec. 8/31-33; Tr. 161, 171, 278, 298-99, 334; R. Ex. 2).

54. Kingspan excepts the ALJ's analysis and conclusion discrediting Tovari-Nagy's testimony that he was not aware of the Union's demand letter when he met with Wood. The

ALJ's analysis and conclusion is contrary to existing law, and is not supported by the weight of the record evidence. (Dec. 8/33-34; Tr. 197-98).

55. Kingspan excepts the ALJ's analysis and conclusion that "Respondent was very concerned about the organizing drive and I infer all members of management became aware of the demand letter very soon after it was delivered and emailed to them." The ALJ's analysis and conclusion is not supported by the weight of the record evidence. (Dec. 8/35-37; Tr. 14, 17, 21, 82-84, 97-98, 138-39, 142-44, 213-16, 239-43, 283-86, 299-301, 307-08, 336-37, 343-44, 347-48; GC Exs. 11-17; R. Ex. 8).

56. Kingspan excepts the ALJ's analysis and conclusion that it did not meet its burden of showing the wage increase for Wood or the implementation of the shift differential was not in large part motivated by a desire to discourage union support. The ALJ's analysis and conclusion is contrary to existing law, and is not supported by the weight of the record evidence. (Dec. 9/1-3; Tr. 11, 13-14, 22, 26, 44-45, 53-55, 62-64, 108, 115, 127, 144, 166-67, 173-74, 181-89, 192--99, 207-10, 221-23, 225-26, 229-38, 250-54, 261-62, 264-65, 267, 271, 281-82, 289-90; GC Exs. 11-18; R. Exs. 2, 5 & 9).

57. Kingspan excepts the ALJ's analysis and conclusion that "There is absolutely no documentation to show that the granting of these benefits and the timing of these benefits was solely the result of a legitimate business decision unrelated to organizing [sic] drive." The ALJ's analysis and conclusion is contrary to existing law, and is not supported by the weight of the record evidence. (Dec. 9/3-5; Tr. 11, 13-14, 22, 26, 44-45, 53-55, 62-64, 108, 115, 127, 144, 166-67, 173-74, 181-89, 192--99, 207-10, 221-23, 225-26, 229-38, 250-54, 261-62, 264-65, 267, 271, 281-82, 289-90; GC Exs. 11-18; R. Exs. 2, 5 & 9).

58. Kingspan excepts the ALJ's analysis and conclusion that "the ad hoc aspect of Wood's wage increase, [sic] suggests anti-union motivation as well as the timing of the increase, Huck Store Fixture Co., 334 NLRB 119, 123 (2001)." The ALJ's analysis and conclusion is contrary to existing law, and is not supported by the weight of the record evidence. (Dec. 9/5-7; ; Tr. 11, 13-14, 22-24, 26, 44-45, 53-55, 59, 76-77, 107-08, 110, 144, 173-74, 230, 184-85, 192-99, 207-10, 230, 233-34, 247, 264-73, 281-82, 298-300; GC Exs. 9-10, 22 & 23; R. Exs. 5, 14 & 15).

59. Kingspan excepts the ALJ's analysis and conclusion that "I conclude that Pat Harris' testimony at Tr. 306-07 provides the most likely explanation for Wood's increase." The ALJ's analysis and conclusion is not supported by the weight of the record evidence. (Dec. 9/9-10; ; Tr. 11, 13-14, 22-24, 26, 44-45, 53-55, 59, 76-77, 107-08, 110, 144, 173-74, 230, 184-85, 192-99, 207-10, 230, 233-34, 247, 264-73, 281-82, 298-300, 306-07; GC Exs. 9-10, 22 & 23; R. Exs. 5, 14 & 15).

60. Kingspan excepts the ALJ's analysis and conclusion that "I infer this was known by everybody in Respondent's management of the Columbus plant." The ALJ's analysis and conclusion is not supported by the weight of the record evidence. (Dec. 9/13-14; Tr. 14, 17, 21, 82-84, 97-98, 138-39, 142-44, 213-16, 239-43, 283-86, 299-301, 307-08, 336-37, 343-44, 347-48; GC Exs. 11-18; R. Ex. 8).

61. Kingspan excepts the ALJ's analysis and conclusion that "I infer that Respondent hoped that by giving Wood a substantial pay increase, it would wean him from his union support." The ALJ's analysis and conclusion is not supported by the weight of the record evidence. (Dec. 9/13-14; Tr. 11, 13-14, 22, 26, 44-45, 53-55, 62-64, 108, 115, 127, 144, 166-67, 173-74, 181-89, 192--99, 207-10, 221-23, 225-26, 229-38, 250-54, 261-62, 264-65, 267, 271, 281-82, 289-90; GC Exs. 11-18; R. Exs. 2, 5 & 9).

62. Kingspan excepts the ALJ's analysis and conclusion that "Moreover, since Respondent knew that Wood had been a leader of the 2010 organizing campaign, I infer that it hoped and believed that if Wood stopped supporting the Union, other employees would also do so." The ALJ's analysis and conclusion is not supported by the weight of the record evidence. (Dec. 9/14-17; Tr. 11, 13-14, 22, 26, 44-45, 53-55, 62-64, 108, 115, 127, 144, 166-67, 173-74, 181-89, 192--99, 207-10, 221-23, 225-26, 229-38, 250-54, 261-62, 264-65, 267, 271, 281-82, 289-90; GC Exs. 11-18; R. Exs. 2, 5 & 9).

63. Kingspan excepts the ALJ's analysis and conclusion that "Respondent's conduct warrants setting aside the January 13, 2012 election and remanding this case to the Regional Director to conduct a second election." The ALJ's analysis and conclusion is contrary to existing law, and is not supported by the weight of the record evidence. (Dec. 9/23-25; Tr. 6, 11, 13-17, 21-24, 26, 34-35, 44-45, 53-55, 59-60, 62-64, 70-74, 76-86, 97-98, 106-08, 110, 115, 120-30, 134-39, 142-44, 150-53, 166-70, 173-74, 181-99, 207-10, 213-16, 221-23, 225-26, 229-43, 247, 250-58, 261-62, 264-73, 277-78, 281-86, 289-90, 298-301, 305, 307-08, 335-38, 340-44, 347-48; GC Exs. 9-17, 22-24; R. Exs. 2, 3, 5-6 8-10 & 13).

64. Kingspan excepts the ALJ's analysis and conclusion that "the sudden wage increase to Roger Wood and the interrogation of Terry Whitehall were part of a continuing plan by Respondent to thwart unionization. [sic] which included the announcement of the shift differential 7 days prior to the filing of the representation petition." The ALJ's analysis and conclusion is contrary to existing law, and is not supported by the weight of the record evidence. (Dec. 9/30-34; Tr. 6, 11, 13-17, 21-24, 26, 34-35, 44-45, 53-55, 59-60, 62-64, 70-74, 76-86, 97-98, 106-08, 110, 115, 120-30, 134-39, 142-44, 150-53, 166-70, 173-74, 181-99, 207-10, 213-16,

221-23, 225-26, 229-43, 247, 250-58, 261-62, 264-73, 277-78, 281-86, 289-90, 298-301, 305, 307-08, 335-38, 340-44, 347-48; GC Exs. 9-17, 22-24; R. Exs. 2, 3, 5-6 8-10 & 13).

65. Kingspan excepts the ALJ's analysis and conclusion that, "the implementation of the shift differential took place during the 'critical period' which is further reason to consider it in determining whether to set aside the results of the election, Wis-Pak-Foods, 319 NLRB 933 n. 2 (1995), enf'd, 125 F.3d 518 (7th Cir. 1997)." The ALJ's analysis and conclusion is contrary to existing law, and is not supported by the weight of the record evidence. (Dec. 9/34-36; Tr. 11, 55, 62-64, 108, 115, 127, 166-67, 173, 181-89, 192, 198-99, 207-10, 221-23, 225-26, 229-38, 250-54, 261-62, 264-65, 267, 271, 281-82, 289-90; GC Exs. 3-4; R. Exs. 2 & 9).

66. Kingspan excepts the ALJ's analysis and conclusion that the alleged violative conduct "manifested itself each and every time a second shift employee received a paycheck during the critical period. The weekly receipt of the shift differential served as a constant reminder to each employee that a benefit granted to discourage support for the Union could just as easily be withdrawn for the same reason." The ALJ's analysis and conclusion is contrary to existing law, and is not supported by the weight of the record evidence. (Dec. 9/38-41; Tr. 11, 55, 62-64, 108, 115, 127, 166-67, 173, 181-89, 192, 198-99, 207-10, 221-23, 225-26, 229-38, 250-54, 261-62, 264-65, 267, 271, 281-82, 289-90; GC Exs. 3-4; R. Exs. 2 & 9).

67. Kingspan excepts the ALJ's analysis and conclusion that the alleged "misconduct properly considered in the instant case was not so minimal to preclude an affect on the outcome of the election." The ALJ's analysis and conclusion is contrary to existing law, and is not supported by the weight of the record evidence. (Dec. 10/1-2; Tr. 6, 11, 13-17, 21-24, 26, 34-35, 44-45, 53-55, 59-60, 62-64, 70-74, 76-86, 97-98, 106-08, 110, 115, 120-30, 134-39, 142-44, 150-53, 166-70, 173-74, 181-99, 207-10, 213-16, 221-23, 225-26, 229-43, 247, 250-58, 261-62, 264-

73, 277-78, 281-86, 289-90, 298-301, 305, 307-08, 335-38, 340-44, 347-48; GC Exs. 9-17, 22-24; R. Exs. 2, 3, 5-6 8-10 & 13).

68. Kingspan excepts the ALJ's analysis and conclusion that factors 3, 4, 5, 6, 8, and 9 of the factors identified in Cedars-Sinai Med. Ctr., 342 NLRB 596 (2004), regarding the Board's determination of whether to set aside an election weigh in favor of setting aside the election in this case. The ALJ's analysis and conclusion is contrary to existing law, and is not supported by the weight of the record evidence. (Dec. 10/4-13; Tr. 6, 11, 13-17, 21-24, 26, 34-35, 44-45, 53-55, 59-60, 62-64, 70-74, 76-86, 97-98, 106-08, 110, 115, 120-30, 134-39, 142-44, 150-53, 166-70, 173-74, 181-99, 207-10, 213-16, 221-23, 225-26, 229-43, 247, 250-58, 261-62, 264-73, 277-78, 281-86, 289-90, 298-301, 305, 307-08, 335-38, 340-44, 347-48; GC Exs. 9-17, 22-24; R. Exs. 2, 3, 5-6 8-10 & 13).

69. Kingspan excepts the ALJ's analysis and conclusion that, "illegal benefits were announced either just before or at the start of the critical period." The ALJ's analysis and conclusion is contrary to existing law, and is not supported by the weight of the evidence. (Dec. 10/13-14; Tr. 11, 55, 62-64, 108, 115, 127, 166-67, 173, 181-89, 192, 198-99, 207-10, 221-23, 225-26, 229-38, 250-54, 261-62, 264-65, 267, 271, 281-82, 289-90; R. Exs. 2 & 9).

70. Kingspan excepts the ALJ's analysis and conclusion that illegal benefits were effectuated during the critical period. The ALJ's analysis and conclusion is contrary to existing law, and is not supported by the weight of the record evidence. (Dec. 10/14; Tr. 6, 11, 13-17, 21-24, 26, 34-35, 44-45, 53-55, 59-60, 62-64, 70-74, 76-86, 97-98, 106-08, 110, 115, 120-30, 134-39, 142-44, 150-53, 166-70, 173-74, 181-99, 207-10, 213-16, 221-23, 225-26, 229-43, 247, 250-58, 261-62, 264-73, 277-78, 281-86, 289-90, 298-301, 305, 307-08, 335-38, 340-44, 347-48; GC Exs. 9-17, 22-24; R. Exs. 2, 3, 5-6 8-10 & 13).

71. Kingspan excepts the ALJ's analysis and conclusion that "Respondent's highest level of management was responsible for this conduct." The ALJ's analysis and conclusion is contrary to existing law, and is not supported by the weight of the record evidence. (Dec. 10/13-14; Tr. 6, 11, 13-17, 21-24, 26, 34-35, 44-45, 53-55, 59-60, 62-64, 70-74, 76-86, 97-98, 106-08, 110, 115, 120-30, 134-39, 142-44, 150-53, 166-70, 173-74, 181-99, 207-10, 213-16, 221-23, 225-26, 229-43, 247, 250-58, 261-62, 264-73, 277-78, 281-86, 289-90, 298-301, 305, 307-08, 335-38, 340-44, 347-48; GC Exs. 9-17, 22-24; R. Exs. 2, 3, 5-6 8-10 & 13).

72. Kingspan excepts the ALJ's analysis and conclusion that "a sufficient number of employees (up to 10 of the 44 employees eligible to vote, including Wood) were directly affected by the misconduct to tip the balance in the election and it is most likely that many unit members who did not work second shift became aware of the shift differential and the substantial raise for Wood prior to the election." The ALJ's analysis and conclusion is contrary to existing law, and is not supported by the weight of the record evidence. (Dec. 10/15-19; Tr. 70, 106, 122, 169-70, 230, 253-58; GC Exs. 3-4; R. Exs. 10-13).

73. Kingspan excepts the ALJ's analysis and conclusion that "of the 11 employees who received the shift differential according to R. Ex. 10, the credible evidence establishes the two of these employees were temporary employees who were not eligible to vote in the January 13, 2012 election. Respondent's evidence is insufficient to prove that employees Edington, Latham, Chris Holcomb and Eric Holcomb were ineligible to vote." The ALJ's analysis and conclusions are contrary to existing law, internally inconsistent with the ALJ's Decision, prejudicial and biased, and is not supported by the weight of the record evidence. (Dec. 10/n. 14; Tr. 70, 106, 122, 169-70, 230, 253-58; R. Exs. 10-13).

74. Kingspan excepts the ALJ's conclusion that Kingspan, by CEO Jeff Irwin, violated Section 8(a)(1) of the Act on about November 1, 2011, by interrogating Roger Wood about employees' union activities. The ALJ's conclusion is contrary to existing law, and is not supported by the weight of the record evidence. (Dec. 10/23-25; Tr. 14-17, 21, 82-84, 97-98, 138-39, 142-44, 213-16, 239-43, 283-86, 299-301, 307-08, 335-38, 340-44, 347-48; GC Exs. 11-17; R. Ex. 8).

75. Kingspan excepts the ALJ's conclusion that Kingspan, by CEO Irwin, violated Section 8(a)(1) on or about December 5, 2011, by interrogating Terry Whitehall about employees' union activities. The ALJ's conclusion is contrary to existing law, and is not supported by the weight of the record evidence. (Dec. 10/27-28; Tr. 14-17, 34-35, 60, 62, 72-73, 79-80, 97-98, 138-39, 142-44, 213-16, 239-43, 283-86, 299-301, 307-08, 335-38, 340-44, 347-48; GC Exs. 11-17; R. Ex. 8).

76. Kingspan excepts the ALJ's finding that Kingspan violated Section 8(a)(1) of the Act by increasing the wage rate of Roger Wood on November 29, 2011 in part to discourage employees from supporting the Union. The ALJ's conclusion is contrary to existing law, and is not supported by the weight of the record evidence. (Dec. 10/30-33; Tr. 11, 13-14, 22, 26, 44-45, 53-55, 62-64, 108, 115, 127, 144, 166-67, 173-74, 181-89, 192--99, 207-10, 221-23, 225-26, 229-38, 250-54, 261-62, 264-65, 267, 271, 281-82, 289-90; GC Exs. 11-18; R. Exs. 2, 5 & 9).

77. Kingspan excepts the ALJ's conclusion that Kingspan violated Section 8(a)(1) of the Act by announcing the implementation of a shift differential on November 22, 2011 and implementing this shift differential in early December 2011 in part to discourage employees from supporting the Union. The ALJ's conclusion is contrary to existing law, and is not supported by the weight of the record evidence. (Dec. 10/34-37; Tr. 11, 55, 62-64, 108, 115,

127, 166-67, 173, 181-89, 192, 198-99, 207-10, 221-23, 225-26, 229-38, 250-54, 261-62, 264-65, 267, 271, 281-82, 289-90; GC Exs. 3-4; R. Exs. 2 & 9).

78. Kingspan excepts the ALJ's Remedy and Order in its entirety. The ALJ's Remedy and Order is contrary to existing law, and is not supported by the weight of the record evidence. (Dec. 11/1-12/10; Tr. 6, 11, 13-17, 21-24, 26, 34-35, 44-45, 53-55, 59-60, 62-64, 70-74, 76-86, 97-98, 106-08, 110, 115, 120-30, 134-39, 142-44, 150-53, 166-70, 173-74, 181-99, 207-10, 213-16, 221-23, 225-26, 229-43, 247, 250-58, 261-62, 264-73, 277-78, 281-86, 289-90, 298-301, 305, 307-08, 335-38, 340-44, 347-48; GC Exs. 9-17, 22-24; R. Exs. 2, 3, 5-6 8-10 & 13).

79. Kingspan excepts the transfer of this case to the Board and the Board's authority to issues a decision in this case. The Board currently lacks a valid quorum.

Respectfully submitted,



Todd L. Sarver (OH0061571)
Steptoe & Johnson, PLLC
Huntington Center, Suite 2200
41 South High Street
Columbus, Ohio 43215
(614) 456-1671 (telephone)
(614) 221-0952 (facsimile)
todd.sarver@steptoe-johnson.com
(email)

Attorneys for Respondent,
Kingspan Insulated Panels, Inc.
d/b/a Kingspan Benchmark

July 6, 2012

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of July, 2012, an electronic PDF version of this Respondent Kingspan Insulated Panels, Inc. d/b/a Kingspan Benchmark's Exceptions to Administrative Law Judge's Decision was filed using the Board's electronic filing system upon:

The National Labor Relations Board
1099 14th Street, NW
Washington, D.C. 20570-1000

And that one copy was served via e-mail on this 6th day of July 2012 upon:

Ms. Catherine Terrell, Esq.
National Labor Relations Board, Region 9
3003 John Weld Peck Federal Building
550 Main Street
Cincinnati, Ohio 45202-3271
catherine.terrell@nrlrb.gov

Julie C. Ford, Esq.
Doll, Jansen, Ford & Rakay
111 W. First St., Ste. 1100
Dayton, Ohio 45402-1156
jford@djflawfirm.com



One of the Attorneys for Respondent
Kingspan Insulated Panels, Inc. d/b/a
Kingspan Benchmark